CF0000058783

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Cri. A. 568/93

Division Bench (Criminal)

/- APPEAL OF PRISONER -/

No. 3294 Name नान जात

Father's Name खेमारु Residence ग्राम - सुरपुला ~~थाना - कोटडाजोर जेसलमेर राज.~~

Age 26 Sentenced to आजीवन कारावास on

21-1-93 Under Section 148, 302, 149 IPC by II A.S.J. Jaysalmer.

S.T.No. 50/88

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may be heard at all if the prisoner states that he does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who shoud appear.

1. Date of application for copy of Judgement :- No.

2. Date of which copy received :-

3. Date on which Appeal sent :- 22-2-93

4. Whether the prisoner wished to be represented or not Yes / No.

No. 3294 Name नान जात S/o खेमारु

Continued in 24/10/87 to 29/10/87 Acad Jail Jaysalmer

No. 302/Lectegen./93 Dated 22/2/93

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jaysalmer. togather with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

Superintendent Central/Distt./Sub Jail

Date of receipt in C.J. M's Office.

Date of receipt of record to accompany.

Memo of appeal of the Appelliate Court.

No. 5/93/10 Dated

Forwarded to the Session Judge Jaysalmer

C.J. Magistrate for CHIEF JUDICIAL MAGISTRATE

- - - - - - - - - - JAISALMER - -

Date of receipt in Appliate Court

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(1)

(32)

आदेश पत्रक

मामला क्रमांक Cr. A. No. 568/93 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Divison Bench :

Hon'ble Shri Fakhruddin &
Hon'ble Shri D.R.Deshmukh, JJ.

18-08-2005

This is a jail appeal.

Shri Ashish Shukla, Govt. Advocate/Additional Public Prosecutor and Shri Akhil Mishra, Panel Lawyer for the State.

Heard.

Learned counsel for the State pointed out that the appellant has already preferred an appeal bearing Criminal Appeal No.98/1993 (***Sukman & Others vs. The State of M.P.***) through Shri R.K. Jain, Advocate and submits that the Jail appeal is superfluous.

Since, Shri R.K. Jain, Advocate has preferred an appeal on behalf of the appellant and the appeal Number is **Cr. Appeal No. 98/1993**, the present appeal is dismissed as superfluous.

Sd/-
Fakhruddin
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Satish

(पीछे देखिये)

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HIGH COURT OF CHHATTISGARH AT BILASPUR

D.B.: **HON'BLE SHRI RAJEEV GUPTA, C.J. &**
HON'BLE SHRI SUNIL KUMAR SINHA, J.

Criminal Appeal No. 98 of 1993

APPELLANTS

1. Sukman S/o Bodku aged about 49 years **(Dead- Name deleted)**
2. Bansingh S/o Laxman, aged about 40 years
3. Budhman son of Laxman aged about 42 years
4. Kana S/o Thosal aged about 44 years **(Dead- Name deleted)**
5. Somaru S/o Thosal aged about 46 years
6. Jamelal S/o Dhansingh aged about 24 years
7. Nanjat son of Somaru aged about 26 years
8. Dhedram S/o Somaru aged about 23 years

All Koshta, Cultivators and residents of village Mulmula, Thana Kondagaon, District Bastar, M.P. (Now Chhattisgarh)

Versus

RESPONDENT The State of M.P.
(Now State of Chhattisgarh)

APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

Appearance :

Miss Maya Verma, Advocate for the appellants.

Mr. Jameel Akhtar Lohani, Panel Lawyer for the State.

JUDGMENT
(14.01.2011)

The following judgment of the Court was delivered by **Sunil Kumar Sinha, J:**

(1) This appeal is directed against the judgment dated 21st of January, 1993 passed in Sessions Trial No. 50/88 by the Second Additional Sessions Judge, Bastar at Jagdalpur. By the impugned judgment, the appellants have been convicted u/ss 148 & 302/149 IPC and sentenced to undergo R.I. for 1 year and imprisonment for life with the further direction to run the sentences concurrently.

(2) Appellant No.1 – Sukman and appellant No.4 – Kana died during the pendency of the appeal. Therefore, their names have been deleted from the cause-title of the appeal and the appeal filed on behalf of appellant No.1- Sukman and appellant No.4 – Kana stands abated.

(3) Appellant No.2- Bansingh, appellant No.3 – Budhman and appellant No.5 – Somaru, after their conviction, have been released on 1.11.2001 and 15.8.2004 by earning remissions, and in this manner, they have already served the sentences imposed against them.

(4) Miss Maya Verma, learned counsel appearing on behalf of the appellants, therefore, has pressed the appeal on behalf of appellants 6 to 8 only. It is stated that the above appellants are on bail.

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(5) The facts, briefly stated, are as under:-

Two brothers namely Mehettar and Dhaniram lost their life in the alleged incident which took place at about 10.00 a.m. on 23.10.87. In all 16 accused persons were prosecuted for the offences punishable u/ss 148, 302 & 302/149 IPC. Accused- Sukman and Jamelal were further prosecuted u/s 324/34 IPC for causing injuries to Gopal Koshta (PW-1). The allegations are that on 23.10.87, the accused persons formed an unlawful assembly, participated in rioting with deadly weapons and in furtherance of the common object of the said assembly committed murder of deceased Mehettar and Dhaniram. The incident took place when the deceased persons were harvesting the paddy crops of a field known as Dumarbeda. The case of the prosecution was based on eye-witness account of Gopal Koshta (PW-1), Rameshwar (PW-4), Jaiman (PW-5), Bannudas (PW-6), Budhyarin Bai (PW-7), Suresh (PW-9) and Shamdei (PW-11). Out of above eye-witnesses, Rameshwar (PW-4) and Suresh (PW-9) turned hostile and they did not support the case of the prosecution. The learned Sessions Judge, relying on the testimonies of remaining eye-witnesses, held that only 8 appellants were responsible for commission of murder of the deceased persons. Therefore, the appellants (accused No. 1 to 8) were convicted and sentenced as aforementioned. However, the remaining 8 accused persons (accused No. 9 to 16) were acquitted of the charges framed against them. Accused- Sukman and Jamelal were also acquitted of the charges framed u/s 324/34 IPC.

(6) Miss Maya Verma, learned counsel appearing on behalf of the appellants 6 to 8, has not disputed the homicidal death of the deceased persons. She argued that in the facts and circumstances

of the case, participation of the above 3 appellants was highly suspicious. She argued that the F.I.R. (Ex.-P/9) was lodged by village Kotwar – Sukaludas (PW-3), who was duly briefed by the injured eye-witness Gopal Koshta (PW-1). The F.I.R. contains the names of only 5 accused persons and it does not contain the names of these appellants. Later on, Gopal Koshta (PW-1) submitted a written report in which he mentioned the names of as many as 16 accused persons who were ultimately prosecuted. She also argued on many material discrepancies in the evidence of the above eye-witnesses, on which the Sessions Judge has partly relied for resting the conviction of the appellants particularly appellants 6 to 8.

(7) On the other hand, Mr. Jameel Akhtar Lohani, learned Panel Lawyer appearing on behalf of the State, opposed these arguments and supported the judgment passed by the Sessions Court.

(8) We have heard the learned counsel for the parties at length and have also perused the records of the sessions case.

(9) Gopal Koshta (PW-1) is an injured witness. According to him, he had witnessed the entire incident. The case of the prosecution is that just after the incident Gopal Koshta (PW-1) and Rameshwar (PW-4) rushed to village Kotwar- Sukaludas (PW-3) and narrated the entire story to him. Sukaludas (PW-3) lodged the F.I.R. (Ex.-P/9) within one and half hour of the incident to police station Kondagaon which is at a distance of 20 Kms from

village Mulmula, where the incident took place. We find that the F.I.R. contains all details regarding the incident and it also contains the names of 5 assailants namely Sukman, Budhman, Bansingh, Kana & Somaru (accused/appellants 1 to 5). Even it contains the names of the eye-witnesses. However, it does not contain the names of 3 appellants i.e. Jamelal, Nanjat and Dhedram (accused/appellants 6 to 8). Therefore, material particulars are missing in the F.I.R. which were bound to be communicated to the maker by the eye-witnesses, and thus, the prosecution story, so far it relates to appellants 6 to 8 becomes suspicious.

(10) The F.I.R. was lodged on 23.10.87. Thereafter on 24.10.87 Gopal Koshta (PW-1) submitted a written report (Ex.-P/1) to the police station which contains the names of 16 accused persons. If the 16 accused persons were really involved in commission of the aforesaid offences, Gopal Koshta (PW-1) would have communicated their names to Sukaludas Kotwar (PW-3) and in turn Sukaludas would have mentioned their names in the F.I.R. Gopal Koshta (PW-1) is real brother of the deceased persons. He admitted in his cross-examination that after the incident, he met the village kotwar and narrated the story to him. He further claimed that he narrated the names of all the 16 accused persons to the Kotwar. Sukaludas (PW-3) has supported the contents of the F.I.R. and he very specifically admitted in the cross-examination that Gopal Koshta (PW-1) had disclosed the names of

5 accused persons only. He further admitted that even Gopal Koshta did not disclose that the assailants were more than the above 5 accused persons who are named in the F.I.R. On appreciation of the evidence of Gopal Koshta (PW-1) in light of the evidence of Sukaludas (PW-3) and the contents of the F.I.R., his evidence, so far as it relates to appellants 6 to 8, becomes unreliable and cannot be made basis of conviction of appellants 6 to 8.

(11) Besides the above, we also find that Gopal Koshta (PW-1) was also sent for his medical examination on 23.10.87 and was examined by the Doctor at about 6.10 p.m. on the same day. In the inquest report (Ex.-P/36), sent for examination of Gopal Koshta (PW-1), the names of only 5 accused persons are there who are named in the F.I.R. If all the 16 accused persons were involved in commission of the aforesaid offence, as claimed by Gopal Koshta (PW-1) by filing written complaint (Ex.-P/1) on 24.10.87, he had an opportunity to tell to the police officer their names on 23.10.87 itself, which he did not do on the said date and filed a written complaint on 24.10.87 mentioning the names of as many as 16 accused persons as the assailants of the deceased persons. This omission also throws doubt on the complicity of the remaining accused persons including the appellants.

(12) Jaiman (PW-5) also claims to be an eye-witness. In Para-10 of his cross-examination, he admitted that he was detained by the police for 2 days. Even the police did not allow him to go for

meals. He very clearly admitted that when he took the names of the accused persons, then only he was left by police. According to him, the police personnels pressurized him in the custody for taking the names of the accused persons. He took the names of the accused persons on the threatening of the police that he will be roped in this case. He admitted that on the above threatening only he told the names of the accused persons as the assailants in the said incident. He also admitted in the last para of his cross-examination that he is deposing these facts on the instruction of Gopal Koshta (PW-1). For the above reasons, we do not find his evidence to be reliable and trustworthy.

(13) Bannudas (PW-6) deposed that he was present as a labour for harvesting the field. He took the names of various accused persons who assaulted the deceased persons. There are many omissions in his case diary statement (Ex.-D/3) recorded u/s 161 Cr.P.C. Apart from the above, he could not depose as to what weapon was carried by which accused person. He could not depose as to how the deceased persons were assaulted. Moreover, he very specifically admitted in cross-examination that accused-Subartin Bai, Sukali Bai and Kundal were not present at the place of occurrence. In fact, he adopted the method of pick & choose. His such conduct of deliberately leaving the names of some of the accused persons at the time of trial as also many material omissions in his 161 statement shows that it was not safe to rely on the testimony of this witness.

(14) Budhyarin Bai (PW-7), another eye-witness, is the widow of deceased Dhaniram. After deposing about the incident, she further deposed that when the deceased persons died, the accused persons uttered that "आज हमने खून से होली खेला" and thereafter they took the blood of the deceased persons and poured it on a Devi-deity which was at a distance of 100 steps from the disputed field. Thereafter they returned back and started dancing on the dead bodies of the deceased persons. The eyes of her husband were removed after his death. All these facts are omissions in her case diary statement (Ex.-D/4) recorded u/s 161 Cr.P.C. Even there are other material omissions in her case diary statement. There are discrepancies in her ocular version and medical evidence i.e. post-mortem report of deceased-Dhaniram (Ex.-P/17) in which eyes etc. were not found to have been removed.

(15) Shamdei (PW-11) is the wife of deceased Mehettar. She deposed that "All 16 persons assaulted the deceased persons. Accused- Kana and Somaru were carrying *bohnah* (a bamboo stick which is used for taking the crops on shoulder). Other accused persons were holding sickles. All assaulted deceased- Mehettar. They cut (removed) the penis of her husband. They pierced and completely damaged his eyes. They pierced *bohnah* in his cheek. They also dissected (opened) the abdomen of her husband". We find that in the post-mortem examination no such injuries were received by deceased- Mehettar. Therefore, there is material

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discrepancy in the oral testimony of Shamdei (PW-11) and the post-mortem report of deceased- Mehettar (Ex.-P/18).

(16) The above eye-witnesses were held to be unreliable for the 8 accused persons who have been acquitted by the learned Sessions Judge. On appreciation of the entire evidence of the above eye-witnesses in light of the contents of the F.I.R. as also the evidence of Kotwar (PW-3) and Dr. G.S. Bacchu (PW-12), we find that it was not safe to rely on the testimonies of the above eye-witnesses so far as appellants 6 to 8 are concerned, and the learned Sessions Judge erred in law in convicting these appellants (appellants 6 to 8) on the basis of testimonies of these eye-witnesses. It appears that after lodging the F.I.R. mentioning the names of 5 accused persons, these witnesses have tried to implicate more and more persons including the 3 appellants herein.

(17) For the foregoing reasons, we allow this appeal and set-aside the conviction and sentences awarded to appellants 6 to 8. Appellants 6 to 8 are acquitted of the charges framed against them. It is stated that theseappellants are on bail. Their bail bonds are cancelled and sureties stand discharged.

Sd/-
Chief Justice
Judge

Sd/-
Sunil Kumar Sinha
Judge

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